

CLD-045

November 9, 2017

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **17-2562**

ABRAHAM ITUAH, Appellant

VS.

CITY OF PHILADELPHIA, ET AL.

(E.D. Pa. Civ. No. 2-16-cv-05772)

Present: CHAGARES, GREENAWAY, JR. and GREENBERG, Circuit Judges

Submitted are

- (1) By the clerk for possible dismissal due to a jurisdictional defect;
- (2) By the clerk for possible for possible dismissal under 28 U.S.C. § 1915(e)(2)(B) or summary action pursuant to 3rd Cir. LAR 27.4 and I.O.P. 10.6;
- (3) Appellees' response; and
- (4) Appellant's response

in the above-captioned case.

Respectfully,

Clerk

MMW/PJC/jw/dwb

ORDER

A notice of appeal in a civil case in which the United States is not a party must be filed within 30 days of the entry of the order or judgment being appealed. See Fed. R. App. P. 4(a)(1). The time limits in Rule 4(a)(1) are mandatory and jurisdictional. See Bowles v. Russell, 551 U.S. 205, 209 (2007). The District Court entered its order

dismissing Appellant's complaint on May 15, 2017. Appellant did not file his notice of appeal until July 14, 2017, more than 30 days after entry of the District Court's order.

We will not construe Appellant's notice of appeal as a motion to extend the time to file a notice of appeal or to reopen the time to file an appeal under Federal Rules of Appellate Procedure 4(a)(5) or 4(a)(6). See Poole v. Family Court of New Castle County, 368 F.3d 263, 266–69 (3d Cir. 2004). To the extent we may construe Appellant's August 23, 2017 response as a motion under Federal Rules of Appellate Procedure 4(a)(5) or 4(a)(6), we decline to do so because the motion is untimely. See Fed. R. App. P. 4(a).

Accordingly, the appeal is dismissed for lack of appellate jurisdiction. As a result, the question whether to dismiss the appeal under 28 U.S.C. § 1915(e)(2) or take summary action under L.A.R. 27.4 and I.O.P. 10.6 does not arise.

By the Court,

s/Michael A. Chagares
Circuit Judge

Dated: January 23, 2018
DWB/arr/cc: AI; DJA; PGM



A True Copy:

Patricia S. Dodszeit

Patricia S. Dodszeit, Clerk
Certified Order Issued in Lieu of Mandate